

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ATS TREE SERVICES, LLC,

Plaintiff,

v.

FEDERAL TRADE COMMISSION,

Defendant.

Case No. 2:24-cv-01743

**UNOPPOSED MOTION OF *AMICI CURIAE* SMALL BUSINESS MAJORITY AND
EVAN STARR TO FILE BRIEF IN OPPOSITION TO PLAINTIFF’S MOTION FOR
STAY OF EFFECTIVE DATE AND PRELIMINARY INJUNCTION (THE “MOTION”),
ECF NO. 10**

Proposed *amici curiae*—a national organization with a constituent network of more than 85,000 small businesses and an economist with expertise in noncompetes and labor restraints—respectfully seek leave to file the accompanying brief in support of the Federal Trade Commission (FTC) and its Non-Compete Clause Rule, 89 Fed. Reg. 38,342 (May 7, 2024) (the Rule) pursuant to Local Rule 7.2(b). Counsel for proposed *amici* have conferred with counsel for all parties and **all parties have consented to this motion and the filing of the proposed brief.**

Proposed *amicus* Small Business Majority engages its substantial networks to deliver resources to entrepreneurs and advocate for public policy solutions that promote inclusive small business growth. Small Business Majority has a strong interest in FTC’s recent rulemaking as its members are particularly disadvantaged by noncompetes, which inhibit finding talent, curb innovation, and represent an artificial restriction on mobility that curbs business growth. Proposed *amicus* Evan Starr is an economist whose work was cited over 100 times by the FTC in the Rule and by briefs filed in this action. *See, e.g.,* Brief of *Amici Curiae* Nat’l Ass’n of Retailers *et al.*, ECF 19-1, at 16-19. He is a leading authority on the economic issues involved in this litigation

and is a leading authority on the effect of noncompetes on workers, businesses and consumers.

“The extent, if any, to which an amicus curiae should be permitted to participate in a pending action is solely within the broad discretion of the district court.” *Waste Mgmt. of Pennsylvania, Inc. v. City of New York*, 162 F.R.D. 34, 36 (M.D. Pa.1995) (collecting cases). “Although a district court has inherent power to appoint amici, there is no specific statute or rule that so provides,” and so district courts may be “guided by Rule 29 of the Federal Rules of Appellate Procedure.” *Martinez v. Cap. Cities/ABC-WPVI*, 909 F. Supp. 283, 286 (E.D. Pa. 1995). Under Rule 29, private parties “may file a brief only by leave of court or if the brief states that all parties have consented to its filing[.]” Fed. R. App. P. 29(a)(2) (emphasis added).

Amici respectfully submit that the Court will find their unique expertise invaluable in resolving the legal issues raised by the pending motions. The Court’s acceptance and consideration of the attached brief will not cause any delay and has been filed with sufficient time for the Court and the parties to consider the merits of the arguments raised.

CONCLUSION

For the reasons described above, amici respectfully ask the Court to grant leave to file the attached brief in opposition to Plaintiff’s Motion to stay the effective date of the Rule.

Respectfully submitted,

Dated: June 6, 2024

/s/ Daniel J. Walker
Daniel J. Walker
Berger Montague PC
1001 G Street, NW, Ste. 400E
Washington, DC 20001
(202) 559-9745
dwalker@bm.net

Eric A. Posner
1111 E. 60th St.,
Chicago, IL 60637
(773) 702-0425
eposner@uchicago.edu

Jamie Crooks
Alexander Rose
FAIRMARK PARTNERS LLP
1001 G Street, NW, Ste. 400E
Washington, DC 20001
(617) 721-3587
jamie@fairmarklaw.com
alexander@fairmarklaw.com

Counsel for Proposed Amici Curiae

CERTIFICATE OF COMPLIANCE

I hereby certify the foregoing complies with the Judicial Policies and Procedures for cases assigned to District Judge Kelley B. Hodge and that foregoing is typed in 12-point Time New Roman font with one-inch margins.

Date: June 6, 2024

/s/ Daniel J. Walker
Daniel J. Walker